

DOCUMENT RESUME

02894 - [A1953012]

[Waiver of Erroneous Payment of Housing Allowance]. B-189012.
Juy 7, 1977. 3 pp.

Decision re: Hosp. Corpsman First Class Fidencio Avila; by
Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Military Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Department of the Navy.

Authority: 10 U.S.C. 2774.

Reconsideration was requested of a prior denial of a
waiver of a claim in the amount of \$3,783.60 for erroneous
payments of Basic Allowance for Quarters. Since the member
failed to inquire about the large increase in pay, he was not
without fault in the matter. The prior denial of waiver was
sustained. (DJM)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

*Siegel
Mil. Fed.*

FILE: B-189012

DATE: July 7, 1977

**MATTER OF: Hospital Corpsman First Class Fidencio Avila,
USN**

DIGEST: Service member moved into Government quarters with his dependents and thus caused his BAQ, originally in the sum of \$150 per month, to be terminated. Subsequently, through error, the BAQ was reinstated. Because the member failed to inquire about the large increase in pay he then received as a result of such reinstatement, it cannot be held that he was without fault in the matter so as to permit waiver of the erroneous payments of BAQ.

This action is in response to a letter on behalf of Hospital Corpsman First Class Fidencio Avila, USN, 461-48-1943, constituting an appeal of the action taken by the Claims Division of this Office dated April 6, 1976, which denied his request for waiver of the claim of the United States against him in the gross amount of \$3,783.60, arising from erroneous payments of Basic Allowance for Quarters (BAQ), at the with dependent rate, during a period he and his dependents occupied Government quarters.

The member and his family moved into Government quarters on September 6, 1972, and, in accordance with applicable laws and regulations, BAQ was stopped. However when a new pay record for the member was opened on January 1, 1973, the entry for BAQ was inadvertently reinstated and the member began receiving the allowance at the rate of \$150 per month. This allowance was paid for the period January 1973 through September 1974 and was increased to \$158.40 per month from October 1974 through January 1975. The erroneous payment was discovered in January 1975.

The member has requested waiver of the indebtedness on the basis he did not know he was being overpaid. He indicates that he received an increase in pay at the time the erroneous payments began and that his net monthly pay was subject to frequent changes due to changes in allotments and collection actions throughout the period in question. He feels that in the circumstance his acceptance of the erroneous payments was justified.

Section 403(b) of title 37, United States Code (1970), provides, in pertinent part, that a member of a uniformed service who is assigned

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to quarters of the United States appropriate to his rating and adequate for himself and his dependents is not entitled to a basic allowance for quarters. Thus when the member and his dependents moved into Government quarters he was no longer entitled to BAQ.

Section 2774 of title 10, United States Code (Supp. II, 1972), provides in pertinent part as follows concerning the waiver of erroneous payments:

"(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances * * * to or on behalf of a member or former member of the uniformed services * * * the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by-

"(1) the Comptroller General * * *

* * * * *

"(b) The Comptroller General * * * may not exercise his authority under this section to waive any claim-

"(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member * * *"

The word fault, as used in 10 U. S. C. 2774, has been interpreted as including something more than a proven overt act or omission by the member. Thus, fault is considered to exist if in light of all the facts it is determined that the member should have known that an error existed and taken action to have it corrected. The standard employed by this Office is to determine whether a reasonable person should have been aware that he was receiving payments in excess of his proper entitlements.

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In the present situation at the time the BAQ was terminated the member's pay reflected a \$150 monthly loss as indicated by the norm pay of \$146 received from October 1972. His previous norm was \$221 or \$75 more each pay period. When the notation on the pay record closed December 31, 1972, concerning the nonpayment of BAQ was not carried forward to the new account opened January 1, 1973, the member's norm pay increased to \$241, a difference of \$95 per pay or \$190 per month. While it is true the member received a pay raise of \$48.10 per month and an increase of \$5.70 per month in commuted rations on January 1, 1973, in our opinion those increases did not amount to such an increase as would cause a reasonable member to accept such a large increase in his pay. It is to be expected that a member with the rank and years of service of this member should have realized that the large increase in his pay was improper and taken steps to have his pay corrected. Thus, it cannot be said that the member was without fault in this matter.

In view of the circumstances we must conclude that the member was at least partially at fault in this matter and that there is no proper basis upon which this Office may waive the Government's claim against him.

Accordingly, the action of the Claims Division in this case is sustained.


Deputy Comptroller General
of the United States